

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7555

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MITCHELL SMALLS, a/k/a Gary Richardson, a/k/a
Cebo, a/k/a Kilo,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, District Judge. (CR-96-131; CA-98-1294)

Submitted: February 9, 2005

Decided: February 15, 2005

Before WILKINSON, MICHAEL, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Mitchell Smalls, Appellant Pro Se. Robert Edward Bradenham, II, Assistant United States Attorney, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Mitchell Smalls seeks to appeal the district court's order construing his motion for reconsideration of his sentence as a 28 U.S.C. § 2255 (2000) motion and dismissing it as successive. An appeal may not be taken from the final order in a § 2255 proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (2000). A certificate of appealability will not issue for claims addressed by a district court absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of his constitutional claims is debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Smalls has not made the requisite showing. Accordingly, we deny Smalls' motion for a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED